

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Review of Regulatory Requirements for)	CC Docket No. 01-337
Incumbent LEC Broadband)	
Telecommunications Services)	

**Comments of SureWest Communications
and Response to Initial Regulatory Flexibility Analysis**

SureWest Communications ("SureWest"), by its attorneys, hereby submits these comments in the above captioned matter and submits its response to the Initial Regulatory Flexibility Analysis ("IRFA") in the Commission's Notice of Proposed Rulemaking in this docket.¹ Herein, SureWest submits comments proposing that the public interest is best served through a regulatory alternative which completely deregulates broadband services provided by incumbent local exchange carriers ("ILECs"). However, if the Commission does not completely deregulate the provision of broadband services for all ILECs, then the Commission must consider regulatory alternatives that impose fewer burdens on small and mid-sized ILECs that are small entities. Similarly, SureWest responds to the IRFA and notes that if the Commission fails to consider regulatory alternatives for small entities, its Regulatory Flexibility Analysis will not satisfy the obligations imposed by Congress in the Regulatory

¹ In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, 67 Fed. Reg. 1945 (Jan. 15, 2002), ("NPRM").

Flexibility Act,² to consider regulatory alternatives which minimize regulatory burdens specifically on small entities. The Commission must address that regulatory obligation in this, and other, proceedings.

I. Introduction

SureWest is a facilities-based provider of telecommunications services, based in Roseville, California. Through its subsidiary companies, SureWest provides incumbent local exchange, competitive local exchange, interexchange, broadband and PCS services. SureWest's subsidiary Roseville Telephone Company ("RTC") is an ILEC serving subscribers in an 83 square mile area, with central office locations serving the Roseville and Citrus Heights, California region. RTC has been providing high quality communications services to its subscribers for over 86 years, and currently serves approximately 134,000 access lines. SureWest has approximately 700 employees, and is a small entity for purposes of analysis under the Regulatory Flexibility Act, as amended.³

II. Absent Complete Deregulation, the IRFA is Inadequate.

More than twenty years ago, Congress declared that "failure to recognize differences in the scale and resources of regulated entities has in numerous instances imposed unnecessary and disproportionately burdensome demands . . . upon small

² See generally 5 U.S.C. §601 *et seq.*

³ Under the Small Business Act, a "small entity" or "small business" is an entity which 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration. 5 U.S.C. Sec. 632. The Commission has recognized that ILECs that meet these criteria and which have 1,500 or fewer employees are "small entities." See NPRM at paras. 59-60.

businesses. . . .⁴ As the Commission decides the instant matter, it must avoid the mistake of which Congress has warned. Namely, the Commission should recognize that incumbent local exchange carriers vary in size, and that small and mid-sized ILECs - - small entities under the RFA - - should not face the same burdens as large ILECs. SureWest submits that the Commission has not adequately addressed this in the NPRM, and that this analysis is absent from the Commission's Initial Regulatory Flexibility Analysis.

A. FCC Regulations On the Provision of Broadband
Impose Substantial Burdens on Small Entities.

SureWest directs the Commission's attention to the company's federal tariff experiences. During the last twelve months, SureWest through its subsidiary RTC, has made eleven (11) tariff filings with the Commission. Of these eleven filings, nine were made to report activity and disclose pricing schemes for broadband services.⁵ Each of these filings was accompanied by a filing fee to the Commission, significant internal development of tariff pages and cost support material, as well as disclosure of proprietary and competitive information. These costs are much greater on small and mid-sized ILECs, than on large ILECs. Certainly, the staff resources and working capital of SureWest are eclipsed by that of a Bell Operating Company (BOC), and yet both are required to continually complete tariff filings as if equally suited.⁶

⁴ Regulatory Flexibility Act, § 2(a)(4), Pub. L. No. 96-354, 94 Stat. 1164.

⁵ The remaining three filings were the standard Annual Access Charge tariff filing and two filings required after the adoption of the MAG pricing plan.

⁶ In addition, SureWest is unaware of any similar filings and concomitant expenses imposed by FCC regulations on the inter-modal competitors of ILECs.

B. An IRFA Mandates Consideration of
Regulatory Alternatives for Small Entities.

Although the Commission has noted that its proposals may decrease existing reporting requirements and reduce existing regulatory burdens generally for all ILECs, SureWest submits that a tiered approach should be adopted by the Commission if anything short of complete deregulation is adopted by the Commission. Such a tiered approach was specifically encouraged and considered by Congress when enacting the Regulatory Flexibility Act⁷ and should continue to be a controlling factor for the Commission. Such an alternative must be considered by the Commission in compliance with its obligations under the Regulatory Flexibility Act. See 5 U.S.C. § 603(c). SureWest respectfully submits that the Commission does not appear to be meeting this obligation in this proceeding.

The Commission recognizes the distinction between large ILECs and mid-sized/small ILECs in other discussions within the instant proceeding.⁸ Proposals for a streamlined or a relaxed regulatory regime must track this distinction and ensure that the application of new rules accommodates ILECs that are classified as small entities. The proper manner in which to address this issue - - short of the market driven elimination of regulation entirely - - is to ensure a tiered approach is adopted and

⁷ Indeed, the Senate contemplated and separately reported that the Regulatory Flexibility Act includes “the use of ‘two tiered’ or ‘multi tiered’ standards for organizations and businesses of differing economic sizes.” S. REP. NO. 96-878, at 2 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2788, 2789.

⁸ See NPRM at note 28 *discussing* the application of Open Network Architecture to BOCs and GTE; *see also* NPRM at para. 37 *explaining* that BOCs and GTE are subject to mandatory price cap regulation while other LECs may enter price caps electively; *see further* NPRM at para. 20 *highlighting* that the Commission has also distinguished the consumers of broadband products based upon their size and relative market power, a situation analogous to the matter before the Commission in which small and mid-sized ILECs should be exempted from regulation as a result of company size.

completely remove regulation for smaller entities.

Indeed, SureWest anticipates that if any opposition is received to relaxing broadband regulation, no such opposition will be directed specifically to small and mid-sized ILECs. Small and mid-sized ILECs, due to the comparatively greater proportion of customer base represented by a single customer, must operate with vastly different corporate cultures and customer relations than a BOC. To use an example, if 1300 SureWest customers sought broadband services, that group would represent one percent of SureWest's customer base and would be a significant driver in any SureWest business model. In contrast, 1300 customers of SBC likely will do little to shape corporate decisions of a BOC which operates in 13 different states. Moreover, the customers of most non-BOC ILECs are usually located in a limited area and have more rapid access and input to an ILEC than customers of BOCs: all 1300 SureWest customers from the above example would live within an 83 square mile area, while 1300 SBC customers could represent 100 customers each from each of the 13 various states which SBC serves. Again, market forces and individual customer preferences are significant factors for small and mid-sized ILECs and successful ILECs will react to such forces, often driven directly from the requests of local customers.

C. Any Streamlined/New Regulations Require a Substantive IRFA,
And Such Regulations Must be Tailored to Small Entities.

Although SureWest submits that the complete deregulation of the provision of broadband services by small and midsized ILECs is the appropriate procedural method for complying with the Regulatory Flexibility Act, even streamlined and new or edited regulations must be drafted with consideration for regulatory flexibility. Mere general

statements that the Commission's proposals will streamline the regulatory burden on all ILECs, as made in the NPRM's IRFA, are certainly not sufficient. To the extent streamlined or edited regulations are proposed by the Commission, SureWest respectfully submits that the Commission's obligation is to analyze such rules and, where applicable as in this case, ensure that only appropriate and the least onerous rules are adopted for small entities. As noted *supra*, SureWest respectfully submits that regulatory flexibility would be achieved through establishing a tiered regulatory scheme as an alternative to uniform regulations. Within such a scheme, the tier of large companies could be tailored with regulatory requirements which the Commission feels is appropriate for BOCs. The tier comprised of small and mid-sized ILECs merit the elimination of regulations - - streamlined or otherwise - - as further addressed herein at the deregulation discussion.

D. The Requirement for a Regulatory Flexibility Analysis
is Eliminated with Complete Deregulation.

Should regulations of provision of Broadband services be uniformly eliminated for all ILECs, then the matter of a Regulatory Flexibility Analysis would be moot. Such complete deregulation, as opposed to the enactment of new albeit more streamlined regulations, would eliminate a burden upon the Commission by allowing it to certify, pursuant to 5 U.S.C. § 605, that an RFA is unnecessary. SureWest respectfully submits that there is a clear basis for such deregulation.

First, the Commission has noted that residential broadband services "generally appear to be subject to significant intermodal competition."⁹ SureWest agrees that

⁹ NPRM at para. 6.

competition exists and that such competition, in conjunction with the lack of a dominant provider in the broadband services market, merits the deregulation of broadband services. The Commission's decision to include intermodal broadband access as a component of competition for ILECs highlights the genuine competition present in the broadband services market. For example, SureWest faces competition for the provision of broadband services from, as the Commission notes, "cable modem service, satellite broadband service, and terrestrial and mobile wireless services."¹⁰ The numerous pipes and paths which currently are available to broadband consumers represent the success of competition in the broadband industry.

Second, the elimination of regulations for all ILECs would encourage investment and growth into broadband by small and mid-sized companies, as well as large companies. With deregulation, these companies could compete on a equal level with large national providers of broadband service and face only the costs associated with provision of service. The burden of additional regulatory compliance costs would be lifted from ILECs who currently face such burdens only due as a result of their legacy lines of business - - regulated common carriers.

Unfortunately, the continued regulation of ILECs in the broadband services field creates a handicap upon the competitiveness of ILECs. Rather than encourage ILECs to provide their customers with services in the broadband industry, the existing regulations serve as an additional hurdle over which only ILEC broadband service providers must leap in offering service. Cable services, satellite services and mobile

¹⁰ NPRM at para. 5.

services are permitted to compete with structural regulatory advantages over ILECs. Yet, these operators have complete monopoly control over the closed networks they use to provide service. Competition exists in the broadband industry, and failure to remove the Commission's barriers to entry for ILECs stifles competition and disadvantages all participants. Such competition and the absence of a dominant market leader merit the deregulation of broadband services for ILECs.

III. Conclusion

SureWest respectfully submits that complete deregulation of ILEC provision of broadband services is in the public interest, and that in the absence of complete deregulation, a tiered regulatory approach must be adopted by the Commission, allowing deregulation of small entities. In addition, SureWest responds to the Initial Regulatory Flexibility Analysis and notes that, absent a complete deregulation of broadband services provided by small entities, the Commission has not met its obligations under the Regulatory Flexibility Act, to consider regulatory alternatives which minimize regulatory burdens specifically on small entities. The Commission must address that regulatory obligation in this, and other, proceedings.

Respectfully submitted,

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